

Internal Revenue Service

Department of the Treasury

District
Director

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

DEC 15 1994

CERTIFIED MAIL

• Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. For the reasons stated below, we conclude that you have not described your activities in a manner sufficient to allow a determination as to your qualification for tax-exempt status under IRC 501(c)(3). Your protest rights are also explained below.

The information provided in your application is contradicted by your responses to our additional information letters. Evidence of those contradictions are your inability to describe your functions, clarify the total number of participants and substantiate your charitable intent.

The organization is an Association formed on [REDACTED], the date you executed your "Amendments to Articles of Association and Bylaws of [REDACTED]. Your governing instrument states that you are organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code or corresponding section of any future Federal tax code.

In Part III, 1 of Form 1023, exemption application, you stated that "At present the only activity of the church will be holding regular weekly services to be overseen by [REDACTED]."

Your activities are conducted in the home of [REDACTED], the founder/pastor, which is located on his ten-acre farm.

Membership is comprised of an unspecified number of individuals because of constant fluctuation and unclear responses.

Income is derived from the founder/pastor, as stated in your [REDACTED] letter. Your financial data indicates the organization has no operational or benevolent expenses.

You do not perform sacerdotal functions nor do you have active programs to increase your membership, other than by "word-of-mouth."

Your pastor, after the completion of a correspondence course, through a University, in [REDACTED], ordained himself.

You also stated that anyone can join your organization and that prospective members are not required to renounce their other religious beliefs or memberships.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

In general, an organization which applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963) and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 203, 206, (8th Cir. 1963).

Revenue Procedure 90-27, C.B. 1990-1, page 514, Section 5.02, states that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Revenue Procedure 93-4, C.B. 1993-1, page 392, states in Section 8.01 that, "The Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case."

In American Guidance Foundation, Inc., v. U.S. 490 F. Supp. 304 (D.D.C. 1980), the court held that, at a minimum, a church must include a body of believers that assemble regularly in order to worship. It must also be reasonably available to the public in its conduct of worship, in its educational instructions and in its promulgation of doctrine. The criteria applied are as follows:

- (a) a distinct legal existence
- (b) a recognized creed and form of worship
- (c) a definite and distinct ecclesiastical government
- (d) a formal code of doctrine and discipline
- (e) a distinct religious history
- (f) a membership not associated with any other church or denomination
- (g) ordained ministers ministering to its congregations
- (h) ordained ministers selected after completing prescribed studies
- (j) established places of worship
- (k) regular congregations
- (l) regular religious services
- (m) Sunday schools for religious instruction of the young
- (n) schools for the preparation of its ministers

In letters dated [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED], we requested that you elucidate your activities. Specifically, the total number of members, the names and roles of the governing body, the source of income, a description of your sacerdotal functions and a breakdown of your expenditures.

████████████████████

In response to our inquiries regarding the membership, you stated that the organization has █████ or more people, letter dated █████. You also stated that you have █████ members, plus the pastor, his █████ sons and his brother which makes a total of █████ members.

This discrepancy resulted in further clarification. In response, you stated that, "We now have █████ members". "The rest left as we cannot operate with out tax number." "They are wondering if we could get into trouble." In your letter dated █████, answer six, you stated you have █████ members, █████, █████ & █████ and █████.

In regards to your governing body, you stated the organization is controlled by the pastor/founder. However, the Board of Deacons has the right to hire or fire the pastor. A subsequent response stated that, "Present time we do not have a Board of Deacons." Therefore, the control of your organization resides with the pastor/founder.

Other than the pastor/founder, your responses, in relation to the other individuals of your governing body are obscure.

Further clarification was requested regarding your source of income. As stated in your correspondence of █████, the total income was derived from the pastor/founder.

At the time of application that income was \$████. Subsequent information reflected income in the amount of \$████. We requested clarity of your actual income and the amount, in terms of dollars, of how much was donated by each individual. You were unable to provide this information.

Letter dated █████, states that the pastor/founder pays any and all invoices for the church. However, your █████ states otherwise. In that letter you stated that you have no invoices, bills, bank statement or disbursement to substantiate your prior claim to expenses incurred by the organization.

As far as your activities are concerned, you do not conduct baptisms, weddings, funerals or other religious ceremonies known as "sacredotal functions."

When asked to provide documentation to verify the pastor's theological education, of his correspondence course from a University in █████, █████, you were unable to provide his information. You claim to have lost the documentation in a fire.

With respect to your application, the information submitted does not establish that you will satisfy the operational test. The numerous discrepancies, unclear and contradictory responses precludes a determination that you will be operated exclusively for exempt purposes within the meaning of Code section 501(c)(3).

As stated in Revenue Procedure 90-27 an organization "must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities."

In the absence of specific detailed explanations regarding your activities, we cannot determine if your organization is religious within the meaning of Internal Revenue Code section 501(c)(3) and section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations.

At this time, you have not provided sufficient information to permit a conclusion that the activities, sometime in the future, will be in furtherance of 501(c)(3) purposes and that they will be carried out in a manner that will meet the requirements of section 501(c)(3) of the Code.

On the authority of the above Revenue Procedure, it is held that a record of actual operations will be required before a ruling or determination will be issued.

After you have operated for a period of time sufficient to permit a conclusion that your operations will clearly fall within the scope of section 501(c)(3) of the Internal Revenue Code, and a reconsideration of your exempt status is desired, a new application for exemption may be filed with this office.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]